

AMENDED IN SENATE JUNE 15, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 10, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 138

Introduced by Assembly Member Hayashi

January 20, 2009

An act to amend Section 5076 of, and to add Sections 5076.1 and 5076.2 to, the Business and Professions Code, relating to accountants.

LEGISLATIVE COUNSEL'S DIGEST

AB 138, as amended, Hayashi. Accounting firms: peer review.

Existing law provides for the licensing and regulation of certified public accountants and other licensees by the California Board of Accountancy. Existing law requires an accounting firm providing attest services, with certain exceptions, to complete a peer review every 3 years in order to renew its registration, if the board, prior to September 1, 2011, determines that a peer review program should be implemented and identifies the resources necessary for that implementation.

This bill would instead impose a peer review requirement for all accounting firms relative to accounting and auditing practice, which would be conducted by a board-recognized peer review program. The bill would require the board to adopt emergency regulations as necessary to implement the program *and to adopt, by January 1, 2010, regulations defining a substandard peer review report. The bill would require an accounting firm and a peer review program provider to file copies of substandard peer review reports with the board.* The bill would also require the board to appoint a peer review oversight committee, as

specified. The bill would specify that these provisions shall be operative only if sufficient appropriations and become inoperative on June 30, 2010, if sufficient hiring authority are provided is not granted pursuant to a budget change proposal to support provide staffing to implement these activities provisions. The bill would also make specified findings and declarations of the Legislature regarding the value of peer review.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) The highest priority of the California Board of Accountancy
- 4 is to protect the public in exercising the board's licensing,
- 5 regulatory, and disciplinary functions.
- 6 (b) The board protects the public by ensuring that only qualified
- 7 persons and firms are licensed to practice public accountancy and
- 8 that appropriate standards of competency and practice, including
- 9 ethics, objectivity, and independence, are established and enforced.
- 10 (c) Mandatory peer review is designed to assist the board in
- 11 ensuring the competency of licensees and their adherence to
- 12 professional standards.
- 13 (d) Firms that complete a peer review will be better equipped
- 14 to perform quality accounting and auditing engagements.
- 15 (e) By completing a peer review, quality control systems can
- 16 be designed or refined to ensure that work is performed in
- 17 conformity with professional standards and that licensees develop
- 18 and refine their technical skills.
- 19 (f) Mandatory peer review demonstrates the board's commitment
- 20 to enhance the quality of the services provided by accounting firms
- 21 and contributes to the public's confidence in the profession.
- 22 (g) Consumer confidence is paramount to a healthy economy.
- 23 Consumer confidence is achieved in the field of accounting when
- 24 consumers feel that the firms providing them with accounting and
- 25 auditing services are doing so in accordance with professional
- 26 standards.
- 27 SEC. 2. Section 5076 of the Business and Professions Code is
- 28 amended to read:

1 5076. (a) In order to renew its registration, a firm, as defined
2 in Section 5035.1, shall have a peer review report of its accounting
3 and auditing practice accepted by a board-recognized peer review
4 program no less frequently than every three years.

5 (b) For purposes of this article, the following definitions apply:

6 (1) "Peer review" means a study, appraisal, or review conducted
7 in accordance with professional standards of the professional work
8 of a firm by an individual who has a valid and current license,
9 certificate, or permit to practice public accountancy from this state
10 or another state and is unaffiliated with the firm being reviewed,
11 and may include an evaluation of other factors in accordance with
12 requirements specified by the board in regulations.

13 (2) "Accounting and auditing practice" includes any services
14 that are performed using professional standards defined by the
15 board in regulations.

16 (c) The board shall adopt regulations as necessary to implement,
17 interpret, and make specific the peer review requirements in this
18 section, including, but not limited to, regulations specifying the
19 requirements for board recognition of a peer review program,
20 standards for administering a peer review, extensions of time for
21 fulfilling the peer review requirement, exclusions from the peer
22 review program, and document submission.

23 (d) The board shall adopt emergency regulations in accordance
24 with the Administrative Procedure Act (Chapter 3.5 (commencing
25 with Section 11340) of Part 1 of Division 3 of Title 2 of the
26 Government Code) to establish policies, guidelines, and procedures
27 as outlined in subdivision (c). The adoption of the regulations shall
28 be considered by the Office of Administrative Law to be necessary
29 for the immediate preservation of the public peace, health and
30 safety, or general welfare. The emergency regulations shall be
31 submitted to the Office of Administrative Law for filing with the
32 Secretary of State and publication in the California Code of
33 Regulations, and shall be replaced with final, permanent regulations
34 within 120 days of their adoption.

35 (e) Nothing in this section shall prohibit the board from initiating
36 an investigation and imposing discipline against a firm or licensee,
37 either as the result of a complaint that alleges violations of statutes,
38 rules, or regulations, or from information contained in a peer review
39 report received by the board.

1 (f) A firm issued a substandard peer review report, as defined
2 by the board in regulation, shall submit a copy of that report to
3 the board. The board shall establish in regulation the time period
4 that a firm must submit the report to the board. This period shall
5 not exceed 60 days from the time the report is accepted by a
6 board-recognized peer review program provider to the date the
7 report is submitted to the board.

8 (g) (1) A board-recognized peer review program provider shall
9 file a copy with the board of all substandard peer review reports
10 issued to California-licensed firms. The board shall establish in
11 regulation the time period that a board-recognized peer review
12 program provider shall file the report with the board. This period
13 shall not exceed 60 days from the time the report is accepted by a
14 board-recognized peer review program provider to the date the
15 report is filed with the board. These reports may be filed with the
16 board electronically.

17 (2) Nothing in this subdivision shall require a board-recognized
18 peer review program provider, when administering peer reviews
19 in another state, to violate the laws of that state.

20 (h) The board shall, by January 1, 2010, define a substandard
21 peer review report in regulation.

22 ~~(f)~~
23 (i) Any requirements imposed by a board-recognized peer review
24 program on a firm in conjunction with the completion of a peer
25 review shall be separate from, and in addition to, any action by
26 the board pursuant to this section.

27 ~~(g)~~
28 (j) Any report of a substandard peer review submitted to the
29 board in conjunction with this section shall be collected for
30 investigatory purposes.

31 (k) Nothing in this section affects the discovery or admissibility
32 of evidence in a civil or criminal action.

33 ~~(h)~~
34 (l) Nothing in this section requires any firm to become a member
35 of any professional organization.

36 ~~(i)~~
37 (m) A peer reviewer shall not disclose information concerning
38 licensees or their clients obtained during a peer review, unless
39 specifically authorized pursuant to this section, Section 5076.1, or
40 regulations prescribed by the board.

SEC. 3. Section 5076.1 is added to the Business and Professions Code, to read:

5076.1. (a) The board shall appoint a peer review oversight committee of certified public accountants of this state who maintain a license in good standing and who are authorized to practice public accountancy to provide recommendations to the board on any matter upon which it is authorized to act to ensure the effectiveness of mandatory peer review.

(b) The committee may request any information from a board-recognized peer review program provider deemed necessary to ensure the provider is administering peer reviews in accordance with the standards adopted by the board in regulations. Failure of a board-recognized peer review program provider to respond to the committee shall result in referral by the committee of the provider to the board for further action. Any information obtained by the board, its representatives, or the peer review oversight committee in conjunction with its review of peer review program providers shall not be a public record, and shall be exempt from public disclosure, provided, however, this information may be disclosed under any of the following circumstances:

(1) In connection with disciplinary proceedings of the board.

(2) In connection with legal proceedings in which the board is a party.

(3) In response to an official inquiry by a federal or state governmental regulatory agency.

(4) In compliance with a subpoena or summons enforceable by court order.

(5) As otherwise specifically required by law.

(c) The members of the committee shall be appointed to two-year terms and may serve a maximum of four consecutive terms.

(d) The board may adopt, as necessary, regulations further defining the minimum qualifications for appointment as a committee member and additional administrative elements designed to ensure the effectiveness of mandatory peer review.

SEC. 4. Section 5076.2 is added to the Business and Professions Code, to read:

5076.2. The provisions of Sections 5076 and 5076.1 shall ~~only be operative if, commencing July 1, 2010, there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the~~

- 1 ~~activities in those sections and sufficient hiring authority is granted~~
- 2 *become inoperative on June 30, 2010, if sufficient hiring authority*
- 3 *is not granted* pursuant to a budget change proposal to the board
- 4 to provide staffing to implement those sections.